

*United States Court of Appeals
for the Second Circuit*



APPENDIX

76-1335

To be argued by
ARMENDE LESSER

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Pg 5

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

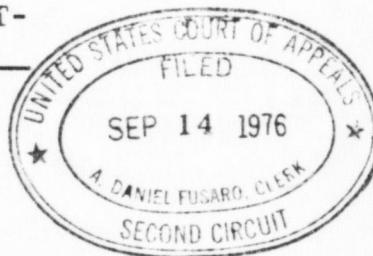
Plaintiff-Appellee,

-against-

PETER VARIANO, JOHN MONACO, MICHAEL
DEMICHAEELS, ANTHONY RUSILLO, HENRY
BUCCI, MICHAEL EVANGELISTA,

Defendants-Appellants.

-----x
BRIEF AND APPENDIX FOR DEFENDANT-
APPELLANT JOHN MONACO



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PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS
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UNITED STATES OF AMERICA,

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BRIEF AND APPENDIX FOR DEFENDANT-
APPELLANT JOHN MONACO

Preliminary Statement

Defendant, John Monaco, appeals from a judgment of conviction rendered after trial before United States District Judge Robert L. Carter and a jury convicting him, with others, of violation of Title 18, U. S. Code, Sections 1955 and 2 (Count Two of the indictment) in that he participated in the conduct, financing and direction of an illegal gambling business, to wit, a sports betting and mutual racehorse policy business,

and the sentence of one month and probation imposed by the court.

Timely notice of appeal was filed, and by directive and pursuant to the rules of this Court, Armende Lesser was directed to prosecute this appeal as counsel for this defendant-appellant. Execution of the sentence was stayed pending the determination of this appeal.

Indictment

The indictment in substance alleges:

(1) A conspiracy between thirteen named defendants and three co-conspirators to violate Section 18, U. S. Code Section 1955 (Count One);

(2) The substantive charge that the said named defendants owned, financed, managed and operated an illegal gambling business, to wit, a sports betting and mutual racehorse policy business in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 222.05 and 225.10, involving five or more persons, remaining in substantially continuous operation for a period in excess of thirty days and having gross revenues of \$2,000.00 in a single day (Count Two).

Statement of Facts

The indictment charges thirteen named defendants and three co-conspirators with both a conspiracy to violate the gambling statutes of the U. S. Code and the substantive count of operating an illegal gambling business remaining in continuous operation for a period of thirty days with gross revenues of \$2,000.00 in a single day under Title 18, U. S. Code, Section 1955.

Appeilant, John Monaco, was described as a runner or collector in this enterprise, a minor function, certainly not within the terminology of the statute and indictment as one who "unlawfully, willingly and knowingly did conduct, finance, manage, supervise, direct and own an illegal gambling business...." The court, upon the conclusion of the trial and on motion on behalf of the defendants, dismissed the conspiracy count (Count One of the indictment) on the ground that the Government's case contained multiple conspiracies, and submitted Count Two to the jury for determination.

The Government produced some thirty-six witnesses on its direct case. Of these only one witness testified to the arrest of John Monaco and seizure of gambling material in an isolated incident in Yonkers, New York, and

two F.B.I. investigators included Monaco's presence in surveillances held by them. A motion to suppress the evidence seized as a result of the Yonkers' arrest was denied by the court prior to the inception of the trial. Objection was interposed to the admission of this material during the course of the trial and is an essential part of this appeal. The Government's case in this memorandum is necessarily limited to its relevance to the finding of guilt as to Monaco.

James Trotta, a witness on behalf of the Government, testified that he was a member of the Yonkers Police Department specifically assigned to the gambling squad, and that on September 3, 1974, he observed appellant driving a brown 1972 Ford down Alden Street, Yonkers, New York (60a). He stopped the car because he "knew" that Monaco did not possess a driver's license based upon the witness' participation in a gambling arrest that occurred three months earlier.

The same witness testified at the hearing to suppress the physical evidence on this occasion and specifically isolated the purpose of his stop in his response to the court's question:

"At any rate, you really stopped him,

I gather, is that correct, because you thought he was operating his motor vehicle unlawfully?

A That's correct, your Honor, plus the fact that the windshield had a crack in it from top to bottom.

THE COURT: That wasn't the reason -- the reason you stopped the car was because you saw this man, recognized him and felt that -- didn't believe he had a license?

THE WITNESS: That's correct.

THE COURT: Because of your knowledge from two months ago that he didn't have a license, you thought he still didn't have one, is that correct?

THE WITNESS: That's correct. (70a)

The officer further testified that Monaco failed to produce a driver's license (he produced a registration form). The officer advised Monaco that he was impounding the vehicle, entered the car, and that while the car was in motion the incriminating gambling documents fell from the visor, and a physical search after the defendant was advised that he was under arrest, revealed additional gambling records (Govt's Exhibits 14A and 14B).

Bob C. Reutter, a member of the F.B.I., conducted a surveillance on December 13, 1974, in Bronx, New York, when he observed and described a white male as the operator

of a white Buick Riviera, whom he subsequently identified (at the trial) as John Monaco, the appellant herein (eighteen months after a surveillance involving many individuals and many vehicles). He further testified that in the course of this surveillance he observed Monaco walking down the road out of view and that he later returned carrying a brown paper bag. It is significant that the written log prepared by this witness and submitted as part of the 3500 material does not contain further identification and does not mention the brown paper bag incident. Photographs taken by the agents in the course of this surveillance and marked in evidence do not contain a likeness of this appellant.

David L. Clark, another F.B.I. agent, conducted a surveillance in the Bronx on December 18, 1974, and one of the drivers of one of the automobiles observed by him, who was identified as a white male, was at the trial identified as Monaco, and this agent further testified that he observed the same white male walk down the road and then return with a brown paper bag. In other words, Agent Reutter adopted the incident from Agent Clark's written log and vice versa. This is the extent of the testimony adduced by the Government with respect to the appellant herein.

Questions Presented

I

Whether the judgment of conviction is factually supported by the record beyond a reasonable doubt.

II

Whether the stop, search and seizure of September 3, 1974, was legal and whether the evidence seized was admissible.

I

The judgment of conviction is not factually supported by the record beyond a reasonable doubt.

The participation of this appellant viewed in the entire context of the indictment was qualitatively minuscule. "When the Government throws out its big conspiracy net to catch the big fish in the criminal sea, it has to be aware that an occasional minnow may wriggle free" (United States v. Tramunti, 513 F. 2d 1087 [2d Cir. 1975]).

Monaco's participation, absent the September 3, 1974, isolated arrest in Yonkers, New York, unquestionably raises a reasonable doubt. The conflicting testimony by

the two F.B.I. agents, who described this defendant as a white male, had only a fleeting glance of driver of a moving vehicle. The log contains descriptions and license numbers of many other vehicles so that it is physically impossible even for a skilled F.B.I. agent to recall a face so observed eighteen months later. There are also the conflicting statements in the written logs submitted as part of the 3500 material wherein Agent Reutter made no mention of a brown paper bag in the possession of Monaco, while the log of Agent Clark did mention a white male with a brown paper bag. It is further significant that the photographs taken by both agents during the course of the surveillance did not contain a likeness of this defendant. Parenthetically, although both agents described the brown paper bag as characteristically used in gambling, neither agent photographed the perpetrator during the course of their respective surveillances.

This court in United States v. Bertolotti, -- F. 2d -- , 2d Cir., decided November 10, 1975, held:

It may generally be conceded that the possibility of prejudice resulting from a variance increases with the number of defendants tried and the number of conspiracies proven. Blumenthal v. United States, 332 U.S. 539, 559 (1947); United States v. Miley, supra, at 1209; Note,

supra, 57 Colum.L.Rev. at 402. 'Numbers are vitally important in trial, especially in criminal matters.' United States v. Kotteakos, supra, at 772. Indeed, the major distinguishing factor between the Supreme Court's finding of no prejudice in Berger and its contrary conclusion in Kotteakos was the difference in the number of defendants and conspiracies. While we recognize that the question of prejudice is not solely quantitative, a consideration of the 'numbers' involved in the case seems an appropriate starting point for our analysis.

At bar the court dismissed the conspiracy count on the ground that the proof contained more than a single conspiracy, loosely connected (United States v. Sperling, 506 F. 2d 1323 [2d Cir. 1974, cert. denied, 420 U.S. 962, 1975]). Title 18, U.S. Code, Section 1955, specifically defines the gambling business described therein as "...(a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 and 225.10, (b), involving five or more persons..."

To sustain the judgment of conviction under this statute, it is therefore incumbent upon the Government to prove that five or more persons were involved in the substantive charge. Since the court determined that more than a single conspiracy was involved in this prosecution, it would not be possible for a jury to

determine whether any five of the participants were involved with which conspiracy.

This question of law will be further developed in argument advanced by the other appellants in this matter. In view of the position of appellant Monaco that the record does not support the judgment of conviction and the more important question of the legality of the stop and seizure of September 3, 1974, this question of law will not be further pursued in this memorandum. He, however, adopts and incorporates by reference the arguments of other appellants in support of this appeal.

II

The stop, search and seizure of September 3, 1974, was illegal. The motion to suppress should have been granted.

The Yonkers' police officer's frank admission that he stopped the appellant on the Yonkers street on September 3, 1974, was based upon a prior arrest three months earlier when Monaco was driving without an operator's license. The evidence upon the suppression hearing and the trial clearly supports appellant's contention that the officer had no proper cause to search defendant's automobile and the sealed envelopes therein

to find the policy slips and gambling paraphernalia which formed the basis of his arrest. The court herein denied the motion on the ground of the officer's

"belief that he was driving without a license and stopping him...what occurred thereafter, the taking of the vehicle down to the police station and the policy slips, or whatever, falling into his lap, he was clearly within his rights to take them and there is no violation of any Fourth Amendment, so that motion is denied (75a)."

Mr. Justice Jackson, soon after his return from the Nuremberg Trials, stated that:

"These [Fourth Amendment rights], I protest are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowering a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government. Brinegar v. United States, 338 U.S. 160, 180 (Jackson, J., dissenting)."

"The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades and disappears" (Coolidge v. United States, 403 U.S. 443, 461) so that there being

"no alerted criminal bent on flight, no fleeting opportunity on an open highway after a hazardous chase, no contraband or stolen goods or weapons, no confederates waiting to move the evidence, not even the inconvenience of a special police detail to guard the immobilized automobile" (Coolidge, *supra*),

an intrusion cannot be justified solely on the

whim or chance of a simple traffic violation.

The Constitution requires "that the deliberate, impartial judgment of a judicial officer...be interposed between the citizen and the police (Wong Sun v. United States, 371 U.S. 471, 481-482). The question at bar is the suppression of the physical evidence seized by the Yonkers police officer and the subsequent conviction in the local city court of Yonkers, New York. The question whether evidence so obtained by state officers and used against the defendant in a Federal trial was obtained by unreasonable search and seizure is to be judged as if the search and seizure had been made by Federal officers (Preston v. United States, 376 U.S. 364, 366). In United States ex. rel. Edward LaBelle v. LaVallee, 317 F. 2d 750, 2d Cir. 1975 this court held:

"[1,2] We consider first appellant's claim that his arrest was illegal and that therefore the initial warrantless seizure of his car cannot be justified as incident to a lawful arrest. See, e. g., Ker v. California, 374 U.S. 23, 34-35, 83 S.Ct. 1623, 10 L.Ed. 2d 726 (1963); United States v. Rabinowitz, 339 U.S. 56, 60, 70 S.Ct. 430, 94 L.Ed. 653 (1950). In determining the validity of LaBelle's arrest, we must look to the applicable state law, in this case the law of the state of New York. Ker v. California, supra, at 37, 83 S.Ct. 1623; United States v. Di Re, 332 U.S. 581, 589-90, 68 S.Ct. 222, 92 L.Ed. 210 (1948)."

At bar the appellant was driving an automobile on the city streets when he was stopped only because the officer knew him, that some months before when he was arrested on another charge he did not have a driver's license. While a routine traffic stop is perfectly permissible and reasonable under the circumstances, the intrusion by the police officer in the automobile was contrary to both State and Federal law and decisions. This incident does not come within the automobile exceptions (e.g. Coolidge v. New Hampshire, 403 U.S. 443, 453-454; Chambers v. Maroney, 399 U.S. 42, 46-49), nor was the seizure an incident to the arrest or independently justified because the police observed in plain view, on consent of the defendant, incriminating evidence in the use of the automobile. New York State similarly does not approve or sanction a search and seizure resulting from a routine traffic check (People v. Ingle, 36 N.Y. 2d 413, 1976; People v. Singletary, 35 N.Y. 2d 526, 1974; People v. Jeffries, 45 A.D. 2d 6 [4th Dept. 1974]).

In People v. Brosnan, 32 N.Y. 264-265, 1974, Mr. Justice Wachtler in a footnote to his dissenting opinion (page 265) stated:

"It merely confirms my feeling that the 'narrow' 'tightly guarded' exceptions spelled out by the United States Supreme

Court will be all but obliterated by the shotgun approach of well intentioned prosecutors and courts attempting to justify an illegal search that has uncovered incriminating evidence."

How appropriate in the case at bar. Exhibits 14A and 14B represent policy gambling paraphernalia seized from the appellant on September 3, 1974. The Government in an effort to cement its case produced witness Calise, who was associated with Michael Yannicelli and other defendants prior to August 1972 when he disassociated himself from the business. This witness identified codes and other markings on the exhibits in an effort to connect the Yannicelli operation with other named defendants. Exhibits were seized in September 1974, yet the Government seeks to connect codes and markings with the exhibits seized more than two years later. Calise admitted that he never saw the exhibits before viewing them in court at trial, that he did not know Monaco, and that the format could have been changed in the intervening period. It appears, therefore, quite evidence that had the motion to suppress this physical evidence been granted, the very foundation of the Government's case would have collapsed.

It is, therefore, submitted that the search and seizure of September 3, 1974, was illegal and that the court erred in denying appellant's motion to suppress.

Conclusion

The order of the District Court, denying appellant's motion to suppress the physical evidence seized on September 3, 1974, should be reversed. The judgment of conviction should be reversed and the indictment dismissed.

Respectfully submitted,

ARMENDE LESSER
Attorney for Defendant-
Appellant John Monaco

1A

APPENDIX
DOCKET ENTRIES

Felony <input checked="" type="checkbox"/>	JUDGE/	Assigned Trial	U.S. vs.	Day Mo. Yr
Minor Offense <input type="checkbox"/>	MAGISTRATE	0857	MONACO, JOHN	09 02 76
Other Misdemeanor <input type="checkbox"/>	0200	1		ASST. U.S. Atty.
	District Office	Disp./Substance		Defendant

I. CHARGES

U.S. CODE SECTION	OFFENSES
18:371	Consp. to deal in Gambling.
13:1955	Gambling.

ATTORNEYS

U.S. Attorney or Asst.
Michael D. Abzug
(212) 791-1162

Defense: GJA, Ret., Waived, Self, None, Other, P.D., C.D.

II. KEY
INTERVALS
& DATES

ARREST	INDICTMENT	ARRAIGNMENT	TRIAL
<input type="checkbox"/> C.O. Custody or Begin on Above Charges	<input type="checkbox"/> High Risk Date Detig'd <input type="checkbox"/> Waived <input type="checkbox"/> Supervising <input type="checkbox"/> Indict/Info	<input type="checkbox"/> Information 2-9-76	<input type="checkbox"/> Trial Set For <input type="checkbox"/> 1st Plea <input type="checkbox"/> Final Plea
			<input type="checkbox"/> Not Guilty <input type="checkbox"/> Ed. Not <input type="checkbox"/> Ed. Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
			<input type="checkbox"/> Voir Dire <input type="checkbox"/> Trial Comm. <input type="checkbox"/> Trial End

III. MAGISTRATE

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
	Return			<input type="checkbox"/> PRELIMINARY EXAMINATION OR REMOVAL HEARING	<input type="checkbox"/> Date Scheduled _____	<input type="checkbox"/> Dismissed
Summons	Issued			<input type="checkbox"/> Date	<input type="checkbox"/> Held for District GJ	<input type="checkbox"/> CONV
	Served			<input type="checkbox"/> Held		
Arrest Warrant				<input type="checkbox"/> Not Waived	<input type="checkbox"/> Intervening Indictment	<input type="checkbox"/> Held to Answer to U.S. AT:
COMPLAINT				Tape No.	INITIAL/No.	Magistrate's Initials
OFFENSE (In Complaint)						

* Show last names and suffix numbers of other defendants on same indictment/information
Centore, et al.

DATE

PROCEEDINGS

IV.
MAGISTRATE
& DISTRICT
COURT
DOCKET
ENTRIES

2-9-76	Filed indictment and ordered sealed. B/W ordered. Motley, J. B/W issued.
2-10-76	Indictment ordered unsealed. Motley, J.
2-23-76	Deft. (No Atty.). Court enters a plea of not guilty. Bail continued at \$10,000 P.R.B. Case assigned to Carter, J. for all purposes. Tenney, J.
2-26-76	Filed the following; papers rec'd from Magistrate Tenney: Docket Entry Sheet - Warrant for Arrest - \$10 in the amount of \$10,000 unsecured - Disposition Sheet - Copy of Indictment.
3-3-76	Filed Govt's notice of readiness for trial.
4-3-76	Filed Deft's GJA-23 Financial Affdvt.
4-11-76	Court of Appeals accepted the trial record and docket sheet. Indictment will be held in suspense....Carter, J.
5-4-76	Filed transcript of record of proceedings, dated 3-3-76
5-2-76	Filed transcript of record of proceedings, dated 3-26-76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK----- x
UNITED STATES OF AMERICA, :----- v -----
LAWRENCE CENTORE, a/k/a "Larry Black," :
MICHAEL YANNICELLI, PETER VARIANO, :
MICHAEL EVANGELISTA, WILLIAM MURTY, :
JAMES OSTRANDER, JOHN MONACO, :
MICHAEL PICCIANO, MICHAEL DeMICHAELS, :
FRANK GALELLA, ANTHONY RUSSILLO, :
ALFONSO COLETTI, and HENRY BUCCI, :
Defendants. :INDICTMENT
S 76 Cr.----- x
COUNT ONE

The Grand Jury charges:

1. From on or about September 1, 1968, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, LAWRENCE CENTORE, a/k/a "Larry Black", MICHAEL YANNICELLI, PETER VARIANO, MICHAEL EVANGELISTA, WILLIAM MURTY, JAMES OSTRANDER, JOHN MONACO, MICHAEL PICCIANO, MICHAEL DeMICHAELS, FRANK GALELLA, ANTHONY RUSSILLO, ALFONSO COLETTI and HENRY BUCCI, the defendants, and Francis J. Millow, Angelina David and Morgan Davis, named herein as co-conspirators but not as defendants, unlawfully, wilfully, and knowingly, did combine, conspire, confederate and agree, together and with each other and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 1955.

2. It was part of said conspiracy that said defendants would unlawfully, wilfully and knowingly, conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting and mutual race horse policy business (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 and 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct and own a part of said illegal gambling business, and (c) being and remaining in substantially continuous operation for a period in excess of thirty days and have a gross revenue of two thousand dollars in a single day.

3. Among the means whereby the defendants carried out the conspiracy were the following:

a. The defendant MICHAEL YANNICELLI, together with the defendants LAWRENCE CENTORE, a/k/a "Larry Black", and PETER VARIANO, controlled, directed, managed, and supervised the illegal gambling business, which operated at various locations around North Tarrytown, Yonkers, Hastings-on-Hudson, Tuckahoe, Eastchester, lower New Rochelle, and upper Bronx County.

b. The defendant MICHAEL EVANGELISTA, operated, conducted and managed a wireroom in the premises of 929 East 213th Street, Bronx, New York.

c. The defendant ALFONSO COLETTI, operated, conducted and managed a wireroom in the premises of Al's Stationery Store, 95 Beekman Avenue, North Tarrytown, New York.

d. Francis J. Millow, named herein as a co-conspirator but not as a defendant, operated, conducted, and managed a wireroom in the premises of 25 Cedar Street, North Tarrytown, New York.

e. The wirerooms, including those specified herein, cooperated with and assisted each other in the operation of the illegal gambling business by:

- (i) Accepting sports and mutuel race horse policy wagers from individual bettors not named herein who would telephone the various wirerooms to place their bets;
- (ii) Exchanging information concerning current odds (commonly known as the "line") on sporting events;
- (iii) Relaying and advising each other of recent betting results including the daily winning policy number.
- (iv) Placing and receiving large wagers with each other so that no single wireroom would be exposed to a large loss (commonly known as "laying off");
- (v) Reviewing amounts of money owed to or by bettors or other participants in the illegal gambling business (commonly known as the "play and collects") as a result of their betting activity.

f. In addition to telephoning various wirerooms to place their bets, individual bettors in Bronx and Westchester Counties also placed wagers with runners. The defendants FRANK GALELLA, HENRY BUCCI, MICHAEL DeMICHAELS, ANTHONY RUSSILLO, and Francis J. Millow, named as a co-conspirator but not as a defendant, together and with others not named herein, collected wagers from individual bettors six days a week at various locations in Bronx and Westchester Counties, including Galella's Barber Shop, 25 Main Street, Tarrytown, New York, Green Tavern Restaurant, 14 Main Street, Hastings-on-Hudson, New York, and the Headless Horseman Sports Center, 66 Beekman Avenue, North Tarrytown, New York. The defendants FRANK GALELLA, HENRY BUCCI MICHAEL DeMICHAELS, and ANTHONY RUSSILLO, together with Francis J. Millow, named herein as a co-conspirator but not as a defendant, and with others not named herein, would, on a weekly basis, collect the losses from and pay the winnings to individual bettors.

g. The defendants JOHN MONACO, JAMES OSTRANDER, MICHAEL PICCIANO, WILLIAM MURTY, and others not named herein, would collect the betting slips accumulated by the runners in the gambling business at various locations in the Bronx and Westchester Counties. The defendants JOHN MONACO, JAMES OSTRANDER, MICHAEL PICCIANO, and WILLIAM MURTY would meet at various locations in Bronx County, including the vicinity of the intersection of Bronx Boulevard at 239th Street, Bronx, New York, to facilitate the transfer of the accumulated betting slips to a central location, commonly known as a "bank", where the betting slips for each runner would be examined to determine (1) the total amount of wagers placed with the runner, (2) his commission based upon 30% of the total amount of wagers which he collected, (3) the number of winning wagers received as well as the gross amount wagered in the entire operation, and (4) the net profit or loss to the defendants MICHAEL YANNICELLI and PETER VARIANO after the winning wagers, commissions and rents for the various wirerooms were paid.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused to be committed, among others, the following overt acts in the Southern District of New York:

1. In or around December, 1968, the defendant LAWRENCE CENTORE spoke to a co-conspirator whose identity is known to the grand jury in the vicinity of Bruno's Restaurant, Yonkers, New York.
2. In or around March, 1969, the defendant LAWRENCE CENTORE spoke to the defendant MICHAEL YANNICELLI.
3. In or around August, 1971, the defendant LAWRENCE CENTORE met a co-conspirator whose identity is known to the grand jury at approximately 9:00 a.m., in Yonkers, New York.

4. In or around March, 1971, the defendant PETER VARIANO met with co-conspirator Francis J. Millow at the Green Tavern, 14 Main Street, Hastings-on-Hudson, New York.

5. In or around May, 1974, the defendants MICHAEL YANNICELLI and PETER VARIANO met with co-conspirator Francis J. Millow in Hastings-on-Hudson, New York.

6. In or around August of 1973, the defendants HENRY BUCCI and PETER VARIANO met with co-conspirator Francis J. Millow at the Sleepy Hollow High School, North Tarrytown, New York.

7. On or about October 20, 1974, the defendant HENRY BUCCI met with co-conspirator Francis J. Millow at approximately 1:00 p.m.

8. On or about December 12, 1974, the defendant MICHAEL EVANGELISTA gave the defendant MICHAEL PICCIANO an envelope in the immediate vicinity of 239th Street and Bronx Boulevard, Bronx, New York.

9. On or about December 16, 1974, the defendant MICHAEL EVANGELISTA gave the defendant WILLIAM MURTY an envelope in the immediate vicinity of 949 East 214 Street, Bronx, New York.

10. On or about December 18, 1974, the defendants WILLIAM MURTY, MICHAEL PICCIANO and JAMES OSTRANDER met in the immediate vicinity of Bronx Boulevard and 239th Street, Bronx, New York.

11. In or around December, 1974, the defendant JOHN MONACO introduced the defendant WILLIAM MURTY to Christine Romeo.

12. On or about December 21, 1974, the defendant JOHN MONACO handed the defendant JAMES OSTRANDER at least five envelopes in Bronx County, New York.

13. On or about December 31, 1974, the defendant MICHAEL EVANGELISTA entered the premises of 929 East 213th Street, Bronx, New York.

7a

14. In or around May, 1972, the defendant MICHAEL DeMICHAELS met in Hastings-on-Hudson, New York, with a co-conspirator whose identity is known to the grand jury.
15. In or around July, 1972, the defendant MICHAEL DeMICHAELS had a conversation in Hastings-on-Hudson, New York, with a co-conspirator whose identity is known to the grand jury.
16. On or about November 13, 1974, the defendant FRANK GALELLA had a conversation with co-conspirator Francis J. Millow.
17. On or about December 7, 1974, the defendant FRANK GALELLA had a conversation with co-conspirator Francis J. Millow.
18. On or about November 22, 1974, the defendant ALFONSO COLETTI had a conversation with co-conspirator Francis J. Millow.
19. On or about December 4, 1974, the defendant ALFONSO COLETTI had a conversation with co-conspirator Francis J. Millow.
20. On or about November 14, 1974, the defendant ANTHONY RUSSILLO had a conversation with co-conspirator Francis J. Millow.
21. On or about November 28, 1974, the defendant ANTHONY RUSSILLO had a conversation with co-conspirator Francis J. Millow.
- (Title 18, United States Code, Section 371)
- COUNT TWO
- The Grand Jury further charges:
- From on or about April 15, 1971, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, LAWRENCE CENTORE, a/k/a "Larry Black," MICHAEL YANNICELLI, PETER VARIANO, MICHAEL EVANGELISTA, WILLIAM MURTY, JAMES OSTRANDER, JOHN MONACO, MICHAEL PICCIANO, MICHAEL DeMICHAELS, FRANK GALELLA, ANTHONY RUSSILLO, ALFONSO COLETTI and HENRY BUCCI, the defendants, unlawfully, wilfully, and knowingly, did conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting and mutual race horse policy business (a) being in violation of the laws of the State of New York,

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to wit, New York State Penal Law, Sections 225.05 and 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct and own a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of thirty days, and having a gross revenue of two thousand dollars in a single day.

(Title 18, United States Code, Sections 1935 and 2.)

Foreman

ROBERT B. FISKE, Jr.
United States Attorney

5/6/76

SA v.
entore,
et al.

arter, R.L.

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2 THE CLERK: As the Court that is about to charge
3 the jury, those spectators desiring to leave the room may
4 do so now.

5 C H A R G E O F T H E C O U R T

6 Ladies and gentleman, we now come to that part
7 of the case where the evidence is in, the lawyers have
8 presented their arguments, and you are about to exercise
9 your final role, which is to pass upon and decide the fact
10 issues in the case.

11 You are the sole and exclusive judge of the facts.
12 You pass upon the weight of the evidence, you determine the
13 credibility of witnesses, and you resolve such conflicts as
14 there may be in the evidence, and you draw such reasonable
15 inferences as may be warranted by the testimony or exhibits
16 in the case.

17 My function at this point is to instruct you as
18 to the law that is applicable to the case. It is your duty
19 to accept the law as I state it to you, and to apply it
20 to the facts as you find them. The logical result of that
21 application is your verdict in the case. I have permitted
22 each of you to take notes during the course of this trial.
23 I expect you to use whatever notes you took merely as
24 memory aids, they should not be allowed to take precedence
25 over your independent memory of the facts. Moreover,

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2 merely because a fellow juror may have memorized in his
3 or her notes something contrary to your recollection is
4 not to be taken by you to mean that your memory is in error.
5 It is your own recollection of the facts, and yours alone,
6 that is controlling.

7 Now, in respect to any fact matter, it is your
8 recollection and yours alone that governs. Anything that
9 counsel, either for the Government or for the defense may
10 have said with respect to matters in evidence during the
11 trial in a question, in colloquy with the Court, in argu-
12 ment or in summation, is not to be substituted for your
13 own recollection of the facts. So, too, anything the
14 Court may have said during the trial, or may refer to during
15 the course of these instructions, as to any factual matter
16 in evidence, is not to be taken in lieu of your own recol-
17 lection.

18 The case must be decided by you upon the sworn
19 testimony of the witnesses, and such exhibits as were re-
20 ceived in evidence, and any stipulation among counsel.

21 At times during this trial I have been called
22 upon to make rulings upon various matters of law. As for
23 example, when a question was put to a witness and it was
24 objected to or after a question was asked a motion was made
25 to strike the answer, or an offer of a document was objected

11 a

1 3 bssr

2 to. As you know, I have sustained some objections and I have
3 overruled others. I have received and rejected exhibits,
4 but it is essential in the performance of your duty that
5 when anything was ordered stricken from the record, or re-
6 jected, that you put it out of your mind and disregard it
7 entirely. Similarly, if a question was asked and an ob-
8 jection to that question was sustained, and no answer was
9 given, the question itself should play no part in your
10 consideration of the case.

11 Please do not concern yourselves at all with my
12 reasons for these rulings. They are purely legal matters,
13 and are of no concern to you.

14 Conferences at the bench were conducted at the
15 request of the attorneys. As I have advised you, these
16 conferences were solely on questions of law and are of no
17 concern to you. You are not to draw any inferences against
18 counsel or any defendant because such requests for a con-
19 ference were made or because such requests were denied.

20 Now, it is your function to determine the truth
21 or falsity of the testimony of each witness. No inference
22 as to the credibility of any witness should be drawn from the
23 fact that upon occasion I have asked questions of a witness.
24 My questions were only intended for clarification or to
25 expedite matters. They were not intended to suggest any

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2 opinion as to the credibility of any witness who appeared
3 before you.

4 How do you determine the truth and how do you
5 appraise the credibility of witnesses?

6 Well, as I told you when you were first sworn in,
7 you use your plain, everyday common sense. The degree of
8 credit to be given to a witness should be determined by
9 his or her demeanor here. His or her relationship to the
10 controversy and to the parties, his or her bias or impar-
11 tiality, the reasonableness of his or her statements, the
12 strength or weakness of his or her recollection, viewed in
13 the light of all the other testimony, and the attendant
14 circumstances in the case.

15 You observed the witnesses. You heard their
16 testimony. How did they strike you? Did their answers
17 seem frank, open, truthful and candid, or were they
18 equivocal, deliberately confusing or evasive, or were they
19 somewhere in between?

20 How did each witness impress you? And so you
21 take each one, and on the basis of your common sense and
22 your everyday experience you determine whether or not you be-
23 lieve the witnesses and to what extent you believe them.

24 In passing upon the credibility of a witness,
25 you may also take into account whether there were material

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2 inconsistencies or contradictions within his or her own
3 testimony; whether a witness changed his or her testimony;
4 the extent to which he or she has been corroborated or
5 contradicted by other credible evidence.

6 Now, the testimony of a witness may fail to
7 conform to the facts as they occurred because the witness is
8 intentionally telling a falsehood, because a witness didn't
9 accurately observe the events about which he testified,
10 or because his recollection of what happened is at fault,
11 or even because he has not expressed himself clearly in
12 giving his testimony.

13 You are entitled to consider the possibility
14 that when a witness is called upon to testify sometime
15 after the event, that inconsistencies may result from an
16 innocent mistake or lapse of memory, rather than from a
17 deliberate attempt to falsify or change the facts.

18 It is not unusual for a witness in a proceeding
19 to utter inconsistencies at some stage.

20 You may accept so much of the testimony of a
21 witness as you may deem true and disregard the rest. You
22 are at liberty, if you deem it appropriate, to disbelieve
23 the testimony in whole or in part even though it is not
24 otherwise contradicted or impeached.

25 You may consider whether the witness is a

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2 disinterested one or whether he is fostering some interest
3 of his own in giving the testimony.

4 Now, an interested witness is not necessarily
5 unworthy of belief. The interest of a witness in the
6 outcome of the lawsuit is a factor, however, which you may
7 consider in determining the weight and credibility to be
8 given to that witness' testimony.

9 It should be remembered that the testimony of
10 agents of the Government are not to be entitled to any
11 greater or lesser weight than the testimony of another
12 witness who is not an agent of the Government.

13 Now, the Government called as a witness Michael
14 Calise and Angelina David, who, if their testimony is to
15 be accepted, were accomplices in the crimes charged
16 against the defendants in this case.

17 In the prosecution of crime the Government is
18 frequently called upon to use witnesses who are accomplices.
19 Often it has no choice. The Government must rely upon
20 witnesses of transactions such as they are.

21 There is no requirement in the Federal Courts
22 that the testimony of an accomplice be corroborated. The
23 Government contends that these witnesses' testimony is
24 corroborated by other evidence with respect to several key
25 portions of their testimony. However, even without such

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2 corroboration, conviction may rest upon the testimony of an
3 accomplice, if you believe it and find it credible, and
4 it does not follow that because a person has acknowledged
5 participation in some criminal act that he or she is
6 incapable of giving a true version of what he or she tes-
7 tified to in the case on trial.

8 Such testimony, however, should be viewed with
9 caution and scrutinized with care. The fact that a witness
10 is an accomplice may be considered by you as bearing on
11 his or her credibility: Was his testimony inspired by
12 any motive of reward, of self interest or hostility to the
13 defendant so that he gave false or colored testimony against
14 him in this court?

15 If you find that it was, you ought to unhesi-
16 tatingly reject it. However, after a cautious and careful
17 examination of an accomplice's testimony and his or her
18 demeanor on the witness stand, if you are satisfied that he
19 or she told the truth as to certain events, there is no
20 reason why you should not accept it as credible and act
21 upon it accordingly.

22 In deciding this case you will be called upon
23 to consider both direct evidence and circumstantial evidence,
24 and I would like to explain the difference between these
25 two types of evidence. Direct evidence is where a witness

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2 or participant testified as to what he saw, heard or ob-
3 served, what he knows of his own knowledge; something which
4 comes to him by virtue of his senses. A document can also
5 contain direct evidence.

6 Circumstantial evidence is evidence of facts and
7 circumstances from which one may infer connected facts
8 which reasonably flow in the common experience of mankind.
9 Stated somewhat differently, circumstantial evidence is
10 evidence of facts from which other facts that are material
11 in the lawsuit may be found by the process of inference.

12 Let me give you an example that I believe has
13 nothing to do with the facts in this case. Suppose you
14 had a material issue in some case as to whether John Doe
15 was drinking alcoholic beverages on some particular night.
16 A witness might take the stand and testify that he had
17 given whiskey to John Doe and had seen him drinking it.
18 That would be what is termed direct evidence. If you
19 believed the witness, and thought he was able to report
20 accurately, you could find from that direct evidence that
21 John Doe had been drinking on the night in question.

22 On the other hand, you may have a witness tes-
23 tify that he had seen John Doe enter a tavern and then had
24 seen him leave the tavern a few hours later walking and
25 talking in ways that suggested he was drunk. If you believed

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2 that witness, and thought he was an accurate reporter, you
3 could find on the basis of that testimony that John Doe had
4 been drinking on the night in question. You would be using
5 circumstantial evidence to find the existence of a material
6 fact in that hypothetical case. But let me tell you that
7 for your purposes there is no general rule of law, and no
8 general rule of good sense that places either of these two
9 items of evidence, direct or circumstantial, in a general
10 way on a higher or lower or different footing from the other.

11 With respect to any evidence admitted into a
12 trial record, whether it is direct or circumstantial, it
13 is entitled to such weight, and you are permitted to draw
14 such reasonable inferences, as your good judgment dictates
15 in a particular case. The weight and effect of any item
16 or category of evidence depends not on whether it is to be
17 categorized as direct or circumstantial, but on the concrete
18 significance of that particular piece of evidence in its
19 trial setting and upon its intrinsic credibility and per-
20 suasive power in the light of your observations of the
21 witness, your own general experience of things, and your
22 reasonable analysis of the whole record.

23 There are times when different inferences may
24 be drawn from facts, whether they are proved by direct or
25 circumstantial evidence. The Government asks you to draw

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one set of inferences while the defendants ask you to draw another. It is for you to decide and for you alone what inferences you will draw.

As I advised you at the start of this trial, the indictment is merely an accusation or charge. It is not evidence or proof of a defendant's guilt and no inference of any kind may be drawn from the indictment.

The Government has the burden of proving its charges against each defendant beyond a reasonable doubt. It is a burden that never shifts and remains upon the Government throughout the entire trial.

A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusation contained in the indictment, and that presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the trial, is in his favor even as I instruct you now. It remains in his favor during the course of your deliberations in the jury room. It is removed only if and when you are satisfied that the Government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt.

What is a reasonable doubt? It is a doubt based on reason which arises from the evidence or lack of evidence in the case. It is a doubt that a reasonable man

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2 or woman may entertain. It is not a fanciful or speculative
3 doubt. It is not an imagined doubt. It is not a doubt that
4 a juror might conjure up in order to avoid performing an
5 unpleasant task or duty. It is not proof to an absolute
6 certainty -- let me repeat, it is a reasonable doubt. It is
7 a doubt that appeals to your reason, to your judgment, your
8 common understanding, and your common sense, a doubt
9 that would cause you to hesitate to act in matters in your
10 daily lives. On the other hand, the Government does
11 not have to prove the guilt of a defendant beyond all
12 possible doubt or to a positive certainty. If that
13 were the rule, few people, however guilty they might be,
14 would be convicted.

15 If, when you consider the evidence in this case,
16 you have a reasonable doubt that the Government has proved
17 any element of the crime charged, then you must return a
18 verdict of acquittal. You may not return a guilty verdict
19 simply because you feel that it is more likely than not
20 that a defendant committed the crime charged. A guilty
21 verdict is only appropriate if each and every one of you is
22 satisfied that a defendant's guilt has been proved beyond
23 a reasonable doubt.

24 The fact that the Government is a party here,
25 that the prosecution is brought in the name of the United

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States of America, entitles it to no greater consideration than that accorded to any other party to the litigation. By the same token, it is entitled to no less consideration. This case should be considered and decided by you as an action between persons of equal standing in the community. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

The indictment names thirteen defendants.

Only nine of these defendants are on trial before you.

They are: Lawrence Centore, Peter Variano, James Ostrander, John Monaco, Michael Picciano, Michael DeMichaels, Anthony Russillo, Alfonso Coletti and Henry Bucci.

These are the only persons whose guilt or innocence you must announce in your verdict. In the determination of innocence or guilt you must bear in mind that guilt is personal. The guilt of a defendant or innocence of the defendants on trial before you must be determined separately with respect to each of them, solely on the evidence or lack of evidence as to them.

Let me return to the -- turn to the indictment and read that which is before you.

The only count, as you know, that you are concerned with is Count 2, and it reads as follows:

21 a

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2 A, The Grand Jury further charges from on or
3 about April 15, 1971, and continuously thereafter, up to
4 and including the date of the filing of this indictment
5 in the Southern District of New York and elsewhere,
6 Lawrence Centore, also Michael Yannicelli -- I am sorry,
7 Michael Centore, also known as Larry Black, Michael
8 Yannicelli, Peter Variano, Michael Evangelista, William
9 Murty, James Ostrander, John Monaco, Michael Picciano,
10 Michael DeMichaels, Frank Galella, Anthony Russillo,
11 Alfonso Coletti and Henry Bucci, the defendants, unlawfully,
12 wilfully and knowingly did conduct, finance, manage,
13 supervise, direct and own an illegal gambling business,
14 to wit: A sports betting and mutual race horse policy
15 business," being in violation of the laws of the State
16 of New York, to wit: New York State Penal Law, Section
17 22505 and 22510; B, involving five or more persons who
18 conduct, finance, manage, supervise, direct and own a
19 part of said illegal gambling business; and, C, re-
20 maining substantially in continuous operation for a
21 period in excess of thirty days, and having a gross
22 revenue of \$2,000 in a single day.

23 The charge relates to a violation of the
24 Federal Gambling Laws, Title 18, United States Code,
25

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2 Section 1955.

3 Section 1955 provides in pertinent part as
4 follows:

5 A, whoever conducts, finances, manages, super-
6 vises, directs or owns all or part of an illegal gambling
7 business shall be guilty of an offense. B, as used in
8 this section, illegal gambling business means a gambling
9 business which, one, is in violation of the law of the
10 State in which it is conducted is; two, involves five
11 or more persons who conduct, finance, manage, supervise,
12 direct or own all or part of such businesses, and, three,
13 has been or remains in substantially continuous operation
14 for a period in excess of thirty days, or has a gross
15 revenue of \$2,000 in a single day.

16 The second paragraph, gambling includes, but is
17 not limited to conducting policies or numbers games.

18 Since the federal law defines in part an
19 illegal gambling business as one which is in violation
20 of the law of the State in which it is conducted, we
21 necessarily turn to the law of the State of New York. The
22 Penal Law of the State of New York, Section 225, contains
23 the following definition:

24 2, Gambling. A person engages in gambling
25 when he stakes or risks something of value upon the

1 15 bssr

2 outcome of a contest of chance, or a future contingent
3 event not under his control or influence, upon an agreement
4 or understanding that he will receive something of value
5 in the event of a certain outcome.

6 3, Player means a person who engages in any
7 form of gambling solely as a contestant or bettor without
8 receiving or becoming entitled to receive any profit
9 therefrom other than personal gambling winnings and without
10 otherwise rendering any material assistance to the es-
11 tablishment, conduct or operation of the particular
12 gambling activity.

13 Paragraph 4. Advance gambling activity. A
14 person advances gambling activity when acting other than
15 as a player, he engages in conduct which materially aids
16 any form of a gambling activity.

17 Paragraph 5, Profit from gambling activity.
18 A person profits from gambling activity when other than
19 as a player he accepts or receives money or other property
20 pursuant to agreement or understanding with any person
21 whereby he participates or is to participate in the pro-
22 ceeds of the gambling activity. Or, two, policy, or the
23 numbers game, means a form of lottery in which the winning
24 chances or plays are not determined upon the basis of a
25 drawing or other act on the part of persons conducting or

16 bssr

connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

With these definitions in mind, I now turn to the specific sections of the New York State Penal Law which the indictment charges were violated.

Section 225.10 provides in pertinent part, and I quote, that "A person is guilty of promoting gambling when he knowingly advances or profits from the unlawful gambling activity by receiving in connection with a policy scheme or enterprise (a), money or written records from a person other than a player whose chances or plays are represented by such money or records, or, (.) receiving more than \$500 in any one day of money played in such scheme or enterprise."

Under this section, one clause provides that New York Law will be violated if a person, in connection with a policy or numbers game, receives from anybody who is not a player money or records showing chances or plays. Under this clause it is the source of money or records that is the key, and no particular number of bets nor any particular amount of money need be shown. Another clause provides that New York Law will be violated if a person, in connection with a policy or numbers game, receives

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2 more than \$500 in bets in one day.

3 Under this clause it is the amount of money
4 that is the key without regard to the number of the bets
5 or the source of the money or records.

6 Section 225.05 provides that a person is guilty
7 of promoting gambling in the second degree when he know-
8 ingly advances or profits from unlawful gambling activity.
9 I have already defined advances or profits from unlawful
10 gambling activity for you. Under this section is is suf-
11 ficient if you find beyond a reasonable doubt that a de-
12 fendant's conduct comes within those definitions, without
13 regard to the number of bets, the amount of money involved
14 or the source of the bets or the money.

15 I have now read to you the pertinent parts
16 of the New York Law which the Government alleges that
17 the defendants have violated. I instruct you further that
18 it is not necessary for you to find that there was a
19 violation of all these sections. It would be enough to find
20 beyond a reasonable doubt that a defendant violated any
21 one of these sections of the State Law in conducting a
22 gambling business as charged.

23 To recapitulate: The ~~indictment~~ alleges that
24 the defendants conducted an illegal gambling business in
25 violation of federal law. To establish this, the first

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2 element that the Government must prove beyond a reasonable
3 doubt is that the illegal gambling was conducted in viola-
4 tion of New York State Law. If you are convinced beyond
5 a reasonable doubt that a defendant committed any one of
6 the following violations then the Government would have met
7 its burden in proving the first element as to that defendant.

8 One, if you find that the defendant knowingly
9 advanced or profited from gambling activity by either
10 receiving records or money from someone other than a
11 player, or by receiving more than five hundred dollars
12 numbers bets on one day, then it would be a violation of
13 Section 225.10.

14 Two, if you find that a defendant knowingly
15 advanced or profited from gambling activity, as I have
16 defined those terms to you, without regard to the amount
17 of money, the number of bets or source of either one, if
18 you find that it is a violation of Section 225.05.

19 I stress that the defendants here are not
20 charged with a violation of New York State Law. It comes
21 into play only as a part of the crime charged against
22 them under the Federal law, the essential elements of
23 which I shall define for you now.

24 Now, against this background of the applicable
25 Federal and State laws we turn to a consideration of the

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2 charge contained in the indictment. In order to sustain
3 the charge under this indictment against a defendant
4 on trial, the Government must establish as to him beyond
5 a reasonable doubt that a gambling business was conducted
6 in the Southern District of New York.

7 I charge you that the Southern District of
8 New York includes Bronx County and North Tarrytown, Yonkers,
9 Hastings-on-Hudson, Tuckahoe, Eastchester, and lower New
10 Rochelle, all in Westchester County.

11 Two, that such gambling business was in violation
12 of the laws of the State of New York. I have already
13 instructed you that a person violates New York State
14 law, when he advances gambling activities by unlawfully
15 accepting bets from members of the public as a business
16 rather than in a casual or personal fashion, upon the
17 outcomes of future contingent events, and also that a person
18 violates the State law when he either knowingly advances
19 or profits from such unlawful gambling activity.

20 You should remember that I explained to you a
21 moment ago three ways in which New York gambling laws
22 could be violated. One of these required a return of \$500
23 in money from gambling. The other two did not require
24 particular amounts.

25 It is important to keep in mind that a violation

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2 of New York law only serves to trigger the Federal gambling
3 law. All the requirements of the Federal gambling law
4 must be met before you can convict a defendant. In this
5 regard the next element requires that such gambling busi-
6 ness was in substantially continuous operation for a period
7 in excess of 30 days, or has gross revenue of \$2,000 in
8 a single day.

9 The Government is not required to prove both
10 parts of the third element. It is sufficient if it proves
11 one or the other.

12 Now, the term "business" is to be given its
13 normal accepted meaning and is to be determined from all
14 the circumstances of the case, including, among other
15 matters, the volume of the activity, its scope and size.
16 As a general rule, a business enterprise involves a con-
17 tinuous course of conduct rather than a single isolated
18 transaction.

19 As to the alternative part of the third element,
20 if you find that bets placed with the alleged gambling
21 enterprise in any single day totalled at least \$2,000,
22 that is sufficient upon which to find that the business
23 had a gross income in that amount on that day.

24 I instructed you during the trial that if in
25 fact you find there was an illegal gambling business, then

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2 it does not matter whether the operation made a profit or
3 lost money.

4 Four, the next element is that five or more
5 persons were involved in a gambling operation in that they
6 conducted, financed, managed, supervised, directed or
7 owned all or part of such business. I shall presently
8 define those terms for you.

9 The words "conducts", "finances", "manages",
10 "supervises", "directs" or "owns", are used in their or-
11 dinary sense or meaning. Thus, to conduct means to act or
12 carry on or to play a role in furthering enterprise, if
13 one is so engaged, the extent of his role does not matter.
14 To conduct would not include one who participates as a
15 mere bettor, who is only entitled to winnings on his bets
16 and otherwise does not profit from a particular gambling
17 business.

18 Finance means to make funds available.

19 Manage, supervise, direct or own readily define
20 themselves.

21 The next and final element is that the defendant
22 knowingly, wilfully and intentionally conducted, financed,
23 managed, supervised, directed, or owned all or part of
24 such an illegal gambling business or caused any of such
25 acts to be performed.

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2 Knowledge, wilfulness and intent exist in the
3 mind and since it is not possible to look into a man's
4 mind to see what went on, the only way you have at arriving
5 at a decision on these questions is for you to take into
6 consideration all the facts and circumstances shown by the
7 evidence, including the exhibits, and to determine from
8 all such facts and circumstances whether the requisite
9 knowledge, wilfulness and intent were present at the
10 time in question.

11 An act is wilful if it is done knowingly,
12 deliberately and with an evil purpose. An act is not done
13 wilfully if it is done as a result of mistake, carelessness,
14 lack of evil purpose or for some other innocent
15 reason. It is not necessary for you to find that a de-
16 fendant knew he was breaking a particular law, and whether
17 or not an act is knowing or wilful has nothing to do with
18 what a person's private reasons for committing the act,
19 so long as the act is done with an evil purpose.

20 A defendant may be found guilty of the crime
21 charged here if he has aided or abetted the commission
22 of the crime in violation of Title 18, United States Code,
23 Section 2. This provides that whoever commits an offense
24 against the United States, or aids, abets, counsels,
25 commands, induces or procures its commission, is punishable

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2 as a principal.

3 Whoever wilfully causes an act to be done which,
4 if directly performed by him or another, would be an
5 offense against the United States, is punishable as a
6 principal.7 Thus, a person who aids or abets another to
8 commit an offense is just as guilty of that offense as he
9 would be had he committed it himself.10 Before you can conclude that a person aided
11 or abetted you must first find that the substantive crime
12 charged in this case, conducting an illegal gambling
13 business, was in fact, committed. Secondly, you must
14 determine that the defendant in some way knowingly and
15 intentionally associated himself with the criminal venture,
16 that he participated in it as something he wished to bring
17 about and that by his actions he tried to make the crime
18 succeed. You must find more than the defendant's mere
19 presence during or knowledge of the offense.20 In other words, if one, fully aware of what he
21 is doing, plays a significant role in furthering and fa-
22 cilitating an act prohibited by law, he is equally as
23 guilty as the person who actually and physically performs
24 the act or acts, even though the latter played a greater
25 part in the perpetration of the crime. Accordingly, you

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2 may find one defendant guilty of the offense as charged
3 in Count Two, if you find beyond a reasonable doubt that
4 any of the named defendants committed the offenses with
5 which they are charged in that count, and that that first
6 defendant aided and abetted him.

7 I will now address myself to more general con-
8 siderations which you must bear in mind during your de-
9 liberations. First, I must emphasize again that there
10 are nine defendants on trial, and you must consider
11 separately whether the defendants charged have been proved
12 -- whether the offense charged has been proved guilty
13 beyond a reasonable doubt.

14 It is your duty to give separate, personal
15 consideration to the case of each defendant. When you
16 do so, you should analyze what evidence in the case shows
17 with respect to that individual, leaving out of considera-
18 tion entirely any evidence admitted solely with regard
19 to other defendants. Each defendant is entitled to have
20 his case determined from the evidence as to his own acts
21 and statements and conduct, and any other evidence in the
22 case which may be applicable to him.

23 Now, during the course of this trial you have
24 heard tape recordings of various conversations as well as
25 other evidence involving one or more of the defendants

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2 but not the others. Bear in mind that you can only con-
3 sider statements in those conversations against the people
4 actually speaking or otherwise involved and not against
5 any other defendant. And in respect to any other evidence,
6 that can be used only against the defendant it actually
7 involves or the defendant to whom it is directly
8 connected.

9 Therefore, that you find one or more of the
10 accused guilty or not guilty should not influence your
11 verdict with respect to the other defendants.

12 Now, the defendants in this case have not taken
13 the stand to testify. As I told you before, the Govern-
14 ment has the burden of proving the charges against each
15 defendant beyond a reasonable doubt. A defendant does
16 not have to prove his innocence. A defendant has the
17 right to remain silent. He does not have to testify or
18 present any evidence in his own behalf, and you may not
19 draw any inference or conclusion or form any prejudice
20 because a defendant did not testify and present evidence.

21 Under your oath as jurors you cannot allow
22 consideration of the punishment which may be inflicted
23 upon a defendant if he is convicted to influence your
24 verdict in any way, or in any sense enter into your
25 deliberations. The duty of imposing sentence rests

1 26 bssr

2 exclusively upon the Court. Your function is to weigh the
3 evidence in the case and to determine the guilt or inno-
4 cence of a defendant solely upon the basis of such evidence
5 and the law.

6 You are to decide the case upon the evidence
7 and the evidence alone, and you must not be influenced
8 by an assumption, conjecture or sympathy or any inference
9 not warranted by the facts. If you fail to find beyond
10 a reasonable doubt that the law has been violated, you
11 should not hesitate for any reason to find a verdict
12 of acquittal. But, on the other hand, if you should find
13 that the law has been violated as charged, you should
14 not hesitate because of sympathy or any other reason to
15 render a verdict of guilty.

16 I would like to point out that you should not
17 enter the jury room with any preconceived pride of opinion.
18 You should not be unwilling to be convinced by intelligent
19 argument with your fellow jurors. Each juror has to answer
20 to his or her own conscience and each has to decide this
21 case for himself or herself, but in so doing you should
22 be willing to consider the views of the other jurors and
23 to talk things out and try your best to reach a unanimous
24 agreement.

25 Your verdict must be one with which each juror

1 27 bssr

2 agrees.

3 If during your deliberations, you deem it
4 necessary to have a copy of the indictment or desire any
5 of the exhibits, they will be sent in to you on request.

6 If you wish any portion of the testimony read,
7 any of the tapes to be played, or the Court's charge re-
8 read, that will be done.

9 Let me just say in that connection, I think
10 each counsel summarized in his summation and suggested
11 that you have certain portions of the testimony reread.
12 Let me suggest that what you do is to exhaust your col-
13 lective recollection first. Go through that process.
14 Obviously, if you want any of the tapes replayed, if you
15 want any of the testimony re-read, that will be done. But
16 let me suggest that you exhaust, each of you, your col-
17 lective recollection before doing that.

18 In conclusion, let me say that this is an
19 important case. Every criminal case is important. It
20 is important to the Government and it is important to the
21 defendants.

22 It is your obligation to decide the case on
23 the evidence and on the law as I have charged it to you.
24 I give the case to you with the confidence that you will
25 do just that.

13 appreciate your service on the jury, and my Clerk will
14 take your phone numbers just in the event that we may
15 have some need to get in touch with you at home. You may
16 now go.

17 [Alternate jurors excused.]

18 [A marshal was sworn.]

19 [Whereupon, at 3:50 p.m. the jury retired
20 to commence deliberations.]

21 THE COURT: I would like to get an agreement
22 from all counsel. I am going up to chambers now and I
23 would like to get an agreement that if the jury wants an
24 exhibit that all of you, with Mr. Abzug, agree upon that
25 and send it in without the necessity of my coming back

37 a

1 29 bssr

1413

2 MR. KATCHER: None, sir.

3 THE COURT: Mr. Mitchell?

4 MR. MITCHELL: None, your Honor.

5 THE COURT: Mr. Panzer?

6 MR. PANZER: No exceptions, your Honor.

7 THE COURT: Mr. Seidler?

8 MR. SEIDLER: No exceptions.

9 THE COURT: The Government can't have any.

10 [In open court:]

11 THE COURT: I want to thank you -- I am going

12 to excuse you. Your services are no longer in need. I

1 30 bssr

2 downstairs. If you have a dispute, obviously I will come
3 down to resolve it. But I would like to get your agreement
4 on the record on that procedure.

5 MR. ABZUG: No opposition from the Government,
6 your Honor.

7 MR. LANNA: I have no opposition.

8 MR. BRODERICK: No opposition.

9 MR. BELLANTONI: Defendant consents and
10 has no opposition.

11 MR. HARTMAN: So agreed.

12 MR. LESSA: Agreed.

13 MR. KATCHER: Agreed.

14 MR. MITCHELL: On behalf of Picciano, yes.

15 MR. PANZER: Yes, Judge.

16 MR. SEIDLER: Defendant Russillo agrees.

17 MR. PANZER: If we do agree, we will just send
18 the exhibit in. There will be no need for your Honor to
19 come down. Only if we --

20 THE COURT: If you have a dispute, obviously
21 I will have to resolve it. All right. I do want to say
22 before I go that I want to congratulate all of you on your
23 summations. I think they were succinct, to the point,
24 well organized, and since I had to listen to all of them
25 and did not participate, it was a relief to have it that way.

[Recess.]

1 233

2 (Note from jury at 4:25 p.m.)

xx 3 (Jury note marked Court's Exhibit 1 for
4 Identification.)

5 (In open court - jury not present)

6 THE COURT: We have a note from the jury which
7 I guess all the defendants' counsel have read. "Of the
8 five or more who have to be involved, can it be one defend-
9 ant related to four others, or not defendants or co-indicteds.10 The answer is obviously yes. I don't understand
11 why we were brought down for that. The answer is obviously
12 yes, and I am sending a note in to the jury to that effect.

13 All right, we will wait for the next one.

14 (Recess)

15 (Note from jury received at 5:15 p.m.)

xx 16 (Jury note marked Court's Exhibit 2 for
17 Identification.)

18 (In open court - jury not present.)

19 THE COURT: I again think that you know what
20 the question that has been asked is, and I gather that there
21 is some problem about it. "By conduct, finance, manage,
22 supervise, direct and own a part of said illegal gambling
23 business." The jury asks, "Does the law include in this
24 definition people who have different levels of responsibility
25 in the business?"

1 cmd's 234

2 My charge indicated clearly that was so. "Is
3 that included under the definition" and the answer is, of
4 course. I don't really understand why they can be in
5 dispute about that. I'm going to instruct them as to what
6 it is and get on the record anything you want to say right
7 now.

8 MR. BRODERICK: I personally take exception to
9 the fact that it is a runner part of the operation.

10 THE COURT: All right.

11 MR. BRODERICK: All right. I mean, I'm just
12 familiar with the Becker case, I'm very familiar with it.
13 The concept of the runner was argued to the jury. There
14 was no charge as a matter of law and we are charging this
15 jury now as a matter of law that a runner is part of this
16 operation.

17 THE COURT: "Does the law include in this definition
18 people at different levels, and is a runner included
19 under this definition?" The answer is, of course a runner
20 is included under this definition.

21 MR. BRODERICK: What I'm asking the Court to do
22 is charge them and say that it's not just the fact of being
23 a runner. The term runner they must consider the evidence.

B95 24 THE COURT: All right. Get the jury.

25 MR. BRODERICK: Your Honor, before the jury gets

1 cmds 235

2 here could you just reread your charge to the jury on that
3 point, and that would be very satisfactory to me, instead
4 of answering that question?

5 THE COURT: I am going to answer the question.

6 (Jury enters the courtroom.)

7 THE COURT: All right, everybody is here.

8 Ladies and gentlemen, you sent me a note, "By
9 conduct, finance, manage, supervise, direct and own" is mis-
10 spelled in the indictment as W-O-N, it is supposed to be
11 O-W-N, "a part of said illegal gambling business, does the
12 law include in its definition people at different levels
13 of responsibility in the business, and is a runner included
14 under this definition?"

15 Let me reread again my charge on the subject.

16 "The words conduct, finance, manage, supervise
17 and direct or own are used in their ordinary sense. Thus
18 to conduct means to act or carry on or play a role in further-
19 ing an enterprise.

20 "If one is so engaged the extent of his role
21 does not matter. To conduct would not include one who
22 participates as a mere bettor. He is only entitled to
23 winnings on his bets and otherwise does not profit from the
24 particular gambling.

25 "Financing is to make funds available, manage,

1 cmd's 236

2 supervise, direct are already defined in themselves. The
3 term conduct refers to both to the high level bosses and
4 street level employees. It does not include the player in
5 the operation. Nor one who, as I said, merely participates
6 in it by placing bets.

7 "Those who participate in the operation of a
8 gambling business, regardless of how minor their role and
9 whether or not they be labeled agents, runners, independent
10 contractors or the like, are included in the term conduct,
11 manage, and what is excluded are the customers of the
12 business. And I want to emphasize as I understand conduct,
13 the term as I have defined it for you and the issue for you
14 to determine is whether the person is one you are consider-
15 ing who is actually engaged in the operation of the business,
16 no matter what you call it."

17 That is what is involved. All right.

18 (Recess)

19 (In open court - jury not present)

20 THE COURT: As I think I've told you, I am going
21 to let the jury go home and return at 9:30 tomorrow. I have
22 a hard time with that also, not in terms of getting up, but
23 in terms of getting out of the house. So we will both
24 struggle.

25 MR. HARTMAN: Yes, sir.

43 a

474

1 cmds 237

2 (Jury enters courtroom)

3 THE COURT: Ladies and gentlemen, I assume that
4 you are stil' deliberating and have not reached any con-
5 clusion, and it has been a long day and I have made no
6 arrangements to, you know, sequester you or anything like
7 that. I just don't think it is necessary.

8 What I am going to do is to allow you to go
9 home now and you understand that you are under my admonition
10 now that you obviously can discuss this matter, but I want
11 you to go home now and obviously think about what you have
12 been doing and keeping it to yourselves and return to the
13 jury room tomorrow morning at 9:30 and resume your delibera-
14 tions. So you can leave all your notes and everything like
15 that, your papers in there and you can go home now and
16 return at 9:30 in the morning and try to be as prompt as
17 you have been in the past.

18 All right, thank you. Good night.

19 (Jury leaves.)

20 THE COURT: Now, gentlemen and ladies, you are
21 free to go as well.

22 (Adjournment taken until May 7, 1976 at
23 9:30 a.m.)

24

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44 a

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Pages missing because of missing notes.

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Centore

1 bssr

2 [Note from the jury marked as Court's Exhibit 3
3 for identification reads as follows:

4 "Is there a master list of the exhibits that
5 would help us to identify them? May we please see the
6 following exhibits: 43-B, 43-A, 44-B, 26 through 34."

7 [Court's Exhibit 3 marked for identi-
8 fication.]

9 THE COURT: Another note from the jury marked
10 Court's Exhibit No. 4 for identification reads as follows:

11 "May we please see Exhibits 18 - 22?"

12 [Court's Exhibit 4 marked for identi-
13 fication.]

14 THE COURT: Another note marked Court's Exhibit
15 reads as follows:

16 "May we see transcripts for defendant given on
17 April 28 and 29" (Specifically Michael Calese testimony).
18 "We want specific testimony by, one, Lawrence Centore,
19 two, Michael DeMichaels, four, Michael Calese' testimony."

20 [Court's Exhibit 5 marked for identi-
21 fication.]

22 THE COURT: The jury wants, as I gather you know,
23 to hear the testimony of Calise dealing with Centore and
24 DeMichaels.

25 The Court Reporter has gone over the notes.

50 a

1 3 psjw

2 They want to hear the tape 50-A and 58.

3 What are those? They want to see Exhibits 48-B-1 and 55.

4 What are they?

5 MR. ABZUG: 58-A is the conversation --

6 THE COURT: No. 50-A and 58.

7 MR. ABZUG: 50-A is a conversation between
8 Mr. Coletti -- the government contends, a conversation
9 between Mr. Coletti and Mr. Millow on November 19, 1974.

10 58 is a conversation between Mr. -- between
11 what the government contends is Mr. Evangelista and Mr.
12 Millow on December 31, 1974.

13 THE COURT: Is there Exhibit 48-B-1? And
14 Exhibit 55 as well. 55 is another tape.

15 MR. ABZUG: Yes. 55 is the tape of November
16 23, 1974. There is no 48-B-1. There is a tape 48, which
17 is November 18, 1974.

18 THE COURT: All right. Tell the marshal to
19 bring them in.

20 MR. PANZER: Judge, with respect to the tape
21 that he referred to, which is a conversation between Mr.
22 Millow and Mr. Evangelista, I don't think that is admissible
23 on the substantive count, neither of those two individuals
24 are on trial. That would be a conversation in furtherance
25 of the conspiracy.

1 4 bsjw

2 THE COURT: I agree.

3 What is 58?

4 MR. ABZUG: The conversation --

5 THE COURT: The conversation between Evangelista

6 MR. ABZUG: And Mr. Millow, that is correct.

7 THE COURT: And 50-A is Coletti?

8 MR. ABZUG: Yes.

9 THE COURT: I am glad you pointed that out.

10 What about 55?

11 MR. ABZUG: 55 is without further specifica-
12 tion. Just the reel of tape of all the conversations on
13 November 23, 1974.

14 [3:25 p.m. - Jury enters the courtroom.]

15 THE COURT: Ladies and gentlemen, I see that
16 your request for documents and so forth have suddenly
17 proliferated.

18 You want to see the transcript of Mr. Calise's
19 testimony on Centore and DeMichaels, and that has been
20 sorted out and it will be read to you.

21 On these tapes that you asked for, 14-A and B
22 are those things in that suitcase, aren't they?

23 MR. ABZUG: 14-A and B are the items which the
24 Government contends were seized from Mr. Monaco. 14-A and
25 14-B? That's the items seized from Mr. Monaco.

1 5 bsjw

2 THE COURT: All right. They want that. You
3 would like to hear the tape 50-A. I think you can hear
4 that.

5 You asked for tape 58. I want to point out to
6 you what I have indicated, that you are now at the point
7 where -- and can only consider evidence that relates to the
8 particular person. You cannot take into account any hear-
9 say evidence, and you cannot therefore consider 58, because
10 58 is a conversation that is not between anybody that is on
11 trial here.

12 As I read 48-B-1, it looks like that. we cannot
13 identify that. You are going to have to make it more
14 specific.

15 55, you are going to have to make that
16 more specific, becaues 55 includes A, B and so forth and so
17 on.

18 All right.

19 (Testimony read)

20 THE COURT: I think the other requests are for
21 14-A and 14-B.

22 Do you have those?

23 MR. ABZUG: Yes.

24 THE COURT: 50-A.

25 MR. ABZUG: There is no transcript. That is

1 6 bsjw

2 merely 58. There is a tape that is in evidence which is
3 58. There is a transcript 58-A which your Honor has.

4 THE COURT: You have also asked for 48-B-1 and
5 55. Do you want all of that? Are these taped conversations?

6 THE FOREMAN: Can I see the slip again? The
7 tape we want to hear was 50-A.

8 THE COURT: That is all right.

9 58-A. What are the others?

10 THE FOREMAN: Then we want Exhibit 48-B-1
11 and 55.

12 THE COURT: 55 is a tape.

13 THE FOREMAN: 55 is a tape?

14 THE COURT: 48 I think is a tape, isn't it?
15 When you get into the 46's and so you are getting into
16 tapes.

17 THE FOREMAN: We wanted exhibits from Murty's
18 car. We might have the numbers mixed up. Monaco's car.

19 THE COURT: That is 14-A and B. You have that.

20 Let me tell you, to be sure we understand
21 one another, 58-A involves a conversation in which none
22 of the defendants on trial are in that conversation.

23 The only purpose that you can use that testimony
24 for is to determine whether the person in the conversation
25 was actually engaged in the business -- as to that person.

1 7 bsjw

2 Then you have to -- if that is a step that you
3 want to determine, you may listen to this, but that is the
4 only purpose for which this conversation can be utilized,
5 if it is credible. At least at that stage of the proceed-
6 ing.

7 All right.

8 MR. ABZUG: Does your Honor wish the govern-
9 ment to play 50-A?

10 THE COURT: Play 50-A and you may play 58-A
11 and the jury understands its limited use to which that
12 conversation can be utilized.

13 MR. ABZUG: I am now distributing what has
14 been marked into evidence as -- marked for identification
15 as 50-A.

16 (Tape played)

17 THE FOREMAN: The jury doesn't want to hear
18 the other tape if we can't use it for evidence. No use
19 wasting our time..

20 THE COURT: You cannot use it for evidence--
21 the purpose I have indicated to you was a limited one,
22 and that is all you can use it for.

23 Resume ~~your~~ deliberations. If we find what we
24 are looking for we will call you back.

25 (Jury leaves the courtroom at 4:40 p.m.)

1 8 bsjw

2 THE COURT: I am going to keep them tonight
3 until there is some conclusion of some kind.

4 MR. MITCHELL: I will cover for Mr. Katcher.

5 MR. KATCHER: He has consented to it.

6 MR. PANZER: Judge, I wanted to make an object-
7 ion with respect to the testimony, with respect to the
8 seizure of Yannicelli. That was a 1970 seizure, and I
9 don't believe that that would be admissible on substantive
10 count.

11 THE COURT: What is that?

12 MR. PANZER: When he's referring to No. 19.
13 All of those exhibits result as a seizure that took part
14 from Yannicelli in 1970.

15 THE COURT: They did not get that. 14-A and
16 so forth --

17 MR. PANZER: But he read back his testimony
18 as to those exhibits, 12-A, 12-B-3, those were all seizures
19 in 1970.

20 THE COURT: Who read that testimony, Calise?

21 MR. PANZER: Yes.

22 THE COURT: Calise was identifying those --
23 as I think you and I disagreed about that the other
24 day, because I accepted your analysis and then as an
25 afterthought concluded that it was an error. Calise is

1 9 bsjw

2 testifying that those existed in '72, that that code existed
3 in '72. That is the reason I allowed it in.

4 .
5 MR. LANNA: Just one point. When the reporter
6 was reading back to the jury, pursuant to their request,
7 the testimony of Mr. Calise, and although I think it was
8 perfectly admissible during the course of the trial, because
9 we had the conspiracy count, I'm talking now of his testi-
10 mony relating prior to April of 1971, it would seem to me
11 at this stage, in the absence -- all we have left now is the
12 substantive count, and that commences with April of 1971.

13 In the absence of the government having
14 submitted, and your Honor, of course, instructing the jury
15 as to prior similar acts which this record is devoid of,
16 it would seem to me that that testimony should be -- the
17 jury should be instructed that that testimony is not
18 admissible under this present posture.

19 THE COURT: I am not going to do that. I am not
20 giving them any such instructions.

21 The main purpose that the jury wanted to hear
22 that testimony for was to determine that -- the content of
23 what Calise said, whether it was credible, about Centore
24 and with regard to what he said with regard to Mr. De
25 Michaels.

26 Those are problems that are created when -- as

1 10 bsjw

2 Mr. Panzer so aptly said, when the conspiracy count is out.
3 It is too late now.

4 . If you wanted to raise that you should have
5 raised it before we started reading.

6 Mr. Bellantoni, do you have something to say?

7 MR. BELLANTONI: No, your Honor.

8 THE COURT: All right. Anything further?

9 (Recess)

10 THE COURT: All right, Mr. Siedler.

11 MR. SIEDLER: I was just confused as to whether
12 or not the last jury question encompassed a request to hear
13 once again the November 23rd tapes.

14 THE COURT: They said 55 and they were not
15 interested in the tapes. They were interested in something
16 else, they made a mistake. That is what they said.

17 Bring the jury in.

18 (Jury enters the courtroom - 5:00 p.m.)

19 THE COURT: That portion of the cross examina-
20 tion and recross examination and redirect examination that
21 we were looking for, we found. It will now be read to
22 you.

23 (Testimony read)

24 THE COURT: You may retire.

25 (Jury excused at 5:10 p.m. to resume
deliberations)

1 BSpa

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2 found the place.

3 I don't think that just because it's two
4 days means that there is no justification for it.5 MR. HOLLMAN: I might say this, I have only
6 been involved in this since Wednesday, I haven't had a
7 chance to talk to Mr. Yannicelli's other counsel. If I
8 have additional information can I bring it to the Court's
9 attention?

10 THE COURT: Yes.

11 MR. HOLLMAN: Obviously this will be offered
12 on the conspiracy count, I believe, which means --13 THE COURT: We're not dealing with that
14 now. I will deal with that when we reach it. We're not
15 talking about the issues that will come up at the trial
16 on this hearing, but on the basis -- on the question of
17 the probable cause the motion is denied, at least
18 insofar as 1970 is concerned.

19 What is left?

20 MR. ABZUG: We have the issue with respect
21 to the seizure from the defendant John Monaco in
22 September 3, 1974.

23 THE COURT: A search of his car?

24 MR. ABZUG: And a subsequent search of his
25 person, your Honor.

2
2 THE COURT: All right.3
3 MR. ABZUG: The government calls James Trotta.4
4 JAMES TROTTA, called as a witness on
5
5 behalf of the government, having first been duly
6
6 sworn, was examined and testified as follows:7
7 DIRECT EXAMINATION8
8 BY MR. ABZUG:9
9 Q How long have you been a member of the
10
10 Yonkers Police Department, Mr. Trotta?11
11 A Approximately three and a half years.12
12 Q Have you been assigned to a particular squad,
13
13 sir?14
14 A Yes, I have.15
15 Q What is that squad, sir?16
16 A The gambling squad.17
17 Q As a result of that assignment, have you
18
18 participated in searches involving suspected violations
19
19 of the New York laws relating to gambling?20
20 A Yes, I have.21
21 Q On the basis of that, those participations,
22
22 are you familiar with documents characteristically used
23
23 in what are known as policy or numbers operations?24
24 A Yes, I am.25
25 Q Could you tell the Court how numbers or policy

1 BDpa

Trotta-direct

211

2 wagers are transported from one place to another?

3 A Most of the time in envelopes, sometimes
4 white envelopes, sometimes small manilla envelopes.

5 Q Do these envelopes contain any writing?

6 A Yes, they do. They have either a name
7 on them or a code number.8 Q Directing your attention specifically to
9 September 3, 1974, were you on duty at that time, sir?

10 A Yes, I wa'.

11 Q With who?

12 A Detective William Drain, D-r-a-i-n.

13 Q In what particular vicinity in Westchester
14 County?

15 A In the vicinity of Yonkers.

16 Q At approximately 1:15 P.M. do you recall
17 where you were?

18 A Yes, we were on Alder Street.

19 Q What if anything did you observe, sir?

20 A We observed one John Monaco driving a 1972
21 Ford down Alder Street and making a left-hand turn onto
22 Elm Street.

23 Q Did you know it was Mr. Monaco at the time?

24 A Yes, I did.

25 Q What did you observe about the vehicle that

61a

1 BSpa Trotta-direct 212

2 he was driving, if anything?

3 A The vehicle he was driving had a cracked
4 windshield.

5 Q What if anything did you do, sir?

9 A From a previous arrest

11 A few months

13 A And he made a left onto Elm Street and
14 went down Elm Street, we followed him down Elm Street
15 and pulled him over at the intersection of Victor
16 Street.

17 Q Why did you pull him over, sir?

18 A Because he was driving without a license

19 Q Was there any other reason, sir?

A. Plus the fact that he had a cracked windshield.

THE COURT: You knew that at the time?

23 THE WITNESS: Yes, your Honor.

24 Q Do you recall what statute violation it is,
25 sir?

2 A 511 of the Vehicle and Traffic Law, driving
3 with a suspended, revoked driver's license.

4 Q What about a cracked windshield, do you
5 recall what violation that is?

6 A Offhand, no.

7 Q Is there any document that would refresh
8 your recollection, sir?

9 A Yes. The police report.

10 Q Did you bring that with you here, sir?

11 A No, I don't have a copy.

12 Q What did you do after you pulled -- after
13 Mr. Monaco pulled over to the curb?

14 A Pulled over to the curb and we got out of
15 the car and asked him for his driver's license and
16 registration.

17 Q Where were you standing when you asked
18 him this?

19 A On the driver's side of the car.

20 Q Where was your partner standing?

21 A He was on that side also.

22 Q And what if anything did Mr. Monaco respond?

23 A He couldn't produce a driver's license
24 and he produced a vehicle registration, and the vehicle
25 was registered to other than Mr. Monaco.

1 BSpa

Trotta-direct

214

2 Q What did you do after that?

3 A We advised him that we were going to impound
4 his car and issue him a summons for driving without a
5 license and for driving a vehicle with a cracked windshield.6 Q Could you tell the Court why you found it
7 necessary to impound Mr. Monaco's vehicle?8 A Well, we couldn't leave it at the scene,
9 otherwise we would be responsible for the vehicle, for
10 any damage to the vehicle.11 Q After you advised Mr. Monaco that he was
12 under arrest what did you do?13 A He got in the car with Detective Drain, in
14 our police car, and I got in his vehicle to drive it to
15 police headquarters to impound it, and upon pulling away
16 from the curb three white envelopes fell from the sun visor
17 of the car.

18 Q Where did they fall from, sir?

19 A The sun visor.

20 Q Where did they fall to?

21 A On my lap.

22 Q What if anything did you recognize these
23 envelopes as, sir?

24 A I recognized them as being gambling records.

25 Q Showing you what has been marked as

1 BSpa Trotta-direct 215

Trotta-direct

215

2 Government's Exhibit 9 for purposes of this hearing,
3 could you tell the Court which of those -- do you recognize
4 those documents?

5 A Yes, I do.

6 Q Without describing their contents, could you
7 tell the Court what those documents are?

8 A Gambling records.

9 Q Which of these documents fell from the visor
10 on September 3, 1974?

11 A These three envelopes.

12 Q That is the envelopes that I am now marking
13 as Government's Exhibit 9-A for identification, is that
14 correct, sir?

15 A That's correct.

16 Q How are you able to tell that those particular
17 documents are the ones that fell from the windshield?

18 . A By the outside of the envelopes, they are
19 dated with the date September 3, 1974, and around the date
20 is a circle

21 Q What if anything did you do after these
22 documents fell from the sun visor?

23 A I advised my partner of what I found and
24 placed Mr. Monaco under arrest, advised him of his rights
25 and took him back to the detective division.

2 Q What did you place him under arrest for
3 at that time, sir?

4 A Possession of gambling records.

5 Q Did you arrive at the stationhouse?

6 A We arrived at the policehouse, detective
7 division, and the further search of Mr. Monaco's person
8 revealed four more white envelopes.

9 Q Where is the police station that you took
10 Mr. Monaco to?

11 A On St. Casimir Avenue.

12 Q Who actually performed the search of
13 Mr. Monaco?

14 A I did.

15 Q What was the purpose of the search, sir?

16 A To determine if he had any other gambling
17 paraphernalia on him or weapons or anything like that.

18 Q This search was prior to the booking of
19 Mr. Monaco?

20 A Yes, it was.

21 Q Did you find anything as a result of your
22 search of Mr. Monaco?

23 A Four more white envelopes.

24 Q Where did you find them, sir?

25 A In the waistband of his pants.

2 Q Showing you what has been marked as
3 Government's Exhibit 9-B for identification, that is,
4 four white envelopes, are you able to identify those
5 documents, sir?

6 A Yes, those are the four white envelopes
7 that I found on Mr. Monaco's person.

8 Q Could you describe very generally the
9 type of search that you did of Mr. Monaco, which produced
10 Government's Exhibits 9-B?

11 A Primarily, just a pat down search.

12 Q What did you do with Government's Exhibits
13 9-A and 9-B once you had discovered them?

14 A Once we discovered them, we looked through
15 them and counted up the policy plays which were contained
16 in them, and we then made out an appropriate collection
17 voucher and placed same in the property clerk's office.

18 Q What did you recognize, if anything, as
19 Government's Exhibit 9-B as?

20 A They were policy plays and also gambling
21 records.

22 MR. ABZUG: For purposes of this hearing
23 only, the government now moves to admit what has been
24 marked into evidence as Government's Exhibits 9-A and 9-B.

25 MR. LESSA: May I see it? No objection.

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** 2 (Government's Exhibit 9-A and 9-B
3 received in evidence.)

4 MR. ABZUG: I have no further questions
5 of this witness, your Honor.

6 CROSS EXAMINATION

7 BY MR. LESSA:

8 Q Officer Trotta when for the first time did
9 you observe this car that you described?

10 A On Alder Street.

11 Q Were you facing the car or looking at the
12 rear of the car?

13 A We were behind the vehicle.

14 Q Who did you observe first, the windshield
15 or the driver?

16 A The driver.

17 Q So that you didn't see the cracked windshield
18 when you stopped the car?

19 A I observed the driver and also the fact
20 that the windshield was cracked. It was quite evident.

21 Q The windshield was in front of you, is
22 that correct, facing the other way?

23 A That's correct.

24 Q And did you ever give the driver, Mr. Monaco,
25 a ticket for driving without a license before?

2 A No, I hadn't.

3 Q So how did you know that he didn't have a
4 license?

5 A I was involved in a previous arrest with
6 Mr. Monaco.

7 Q Actually, you stopped the car because
8 you recognized him, isn't that correct?

9 A I recognized Mr. Monaco, that's correct.

10 Q That's the reason you stopped the car.

11 A The reason I stopped the car was because
12 I recognized Mr. Monaco and I knew that he didn't have
13 a driver's license.

14 Q After you stopped the car, who went into
15 the car?

16 A Mr. Monaco went into the car after we
17 stopped it.

18 Q And did you enter the car after that?

19 A After I informed him the car was going
20 to be impounded, I entered the car.

21 Q Where was the car situated at that point,
22 was it against the curb?

23 A It was near the curb.

24 Q Was the car equipped with a lock, with
25 locks?

2 A Yes, it was.

3 Q Did you lock the car and take Mr. Monaco to
4 the station, was that possible?

5 A No, I didn't.

6 Q You could not?

7 A You asked me did I or would it be possible?

8 Q I said could you. Were you able to lock
9 the car and remove -- and take Mr. Monaco to the police
10 station?

11 A I could have.

12 Q You could leave the car there, could you
13 not?

14 A I could have.

15 MR. LESSA: That's all.

16 Your Honor, there is no probable cause.

17 This is a simple traffic situation where the police
18 had absolutely no right to enter the car, and had they
19 not entered the car they would not have come upon this,
20 the property that we seek to suppress.21 THE COURT: Why did you arrest Mr. Monaco
22 before? How long ago was it, two months before?23 THE WITNESS: I didn't arrest him personally.
24 I was involved in the arrest.

25 THE COURT: At that time how did you find that

2 he was driving without a license?

3 THE WITNESS: Part of the procedure is when
4 booking a prisoner, once he's arrested, you obtain
5 information from his driver's license.6 THE COURT: Then you saw that you recognized
7 him driving on this particular day --

8 THE WITNESS: That's correct.

9 MR. LESSA: May I ask a question?

10 BY MR. LESSA:

11 Q When was the time you arrested him
12 before this incident?13 A I didn't arrest him. I was involved in
14 the arrest. I believe it was a month or two before.15 Q So that it was possible that he obtained
16 a license in between, or whatever, if it was suspended
17 he had opportunity to have it reinstated?

18 A It's possible.

19 MR. LESSA: That's all, sir.

20 THE COURT: At any rate, you really stopped
21 him, I gather, is that correct, because you thought that
22 he was operating his motor vehicle unlawfully?23 A That's correct, your Honor, plus the fact
24 that the windshield had a crack in it from top to bottom.

25 THE COURT: That wasn't the reason --

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4 the reason you stopped the car was because you saw this
5 man, recognized him and felt that -- didn't believe he had
6 a license?

7 THE WITNESS: That's correct.

8 THE COURT: Because of your knowledge
9 from two months ago that he didn't have a license, you
10 thought he still didn't have one, is that correct?

11 THE WITNESS: That's correct.

12 THE COURT: Can you verify the time of
13 that arrest any more accurately than a month or two?

14 THE WITNESS: I believe it was in the month
15 of June.

16 THE COURT: When was this?

17 THE WITNESS: In the month of September.

18 THE COURT: All right. Any further
19 questions?

20 MR. ABZUG: No, your Honor.

21 THE COURT: Thank you very much.

22 (Witness excused.)

23 THE COURT: I am going to have to give this
24 some thought. Quite frankly, Mr. Lessa and Mr. Abzug,
25 I think that the officer would have a right to stop the
car, and I think that if he feels or has reason to
believe that somebody is driving without a valid license,

2 that that is a basis for his stopping the car.

3 The question I have in my mind is the
4 question that you raised, whether the fact that he didn't
5 have a license in June gives the officer the right to
6 be suspicious in September. I don't know. I will give
7 it some thought and make a decision tomorrow morning.

8 Anything further?

9 MR. ABZUG: No, your Honor.

10 MR. VICTOR: There is one motion to
11 suppress with regard to a search on Evangelista that
12 was part of my motion papers which for some reason we
13 have not had a ruling on.

14 It requires no evidentiary hearing. Our
15 claim is that the motion is defective on its face. I
16 would state that the motion papers set forth no under-
17 lying facts, merely conclusory statements of the affiant,
18 and therefore it was insufficient to raise probable
19 cause and the cases I cite in support of that are annexed
20 to the same motion papers in the brief. We cite the
21 cases of Aguillar, Spinelli and Napolitano.

22 THE COURT: I think I can handle this a
23 little more expeditiously if you let me borrow your --
24 wait a minute. Maybe I have it here. What page?

25 MR. VICTOR: The brief relating to the issue is

2 (In open court.)

3 THE COURT: I have pending a -- rather, I
4 decided a motion by Mr. Victor on the validity of the
5 warrant, search warrant, I believe?

6 MR. VICTOR: Yes, your Honor.

7 THE COURT: I denied the motion and said I
8 would think about it. I have thought about it, and the
9 motion is now finally denied.

10 I have pending a motion by Mr. Lessa,
11 I believe, on the stop of Mr. Monaco and his arrest.

12 Who was the police officer in that?

13 MR. ABZUG: Police Officer James Trotta.
14 He is seated in the back of the courtroom, your Honor.

15 THE COURT: Mr. Trotta, there are a couple
16 of items that I would like to clear up. Would you come
17 and take the stand, please?

18 JAMES TROTTA, having previously been
19 duly sworn, was resworn and testified as follows:

20 BY THE COURT:

21 Q Mr. Trotta, as I understood your testimony
22 yesterday, in June of 1974 Mr. Monaco was arrested for
23 driving without a license, is that correct, or he was
24 arrested and found to be driving without a license?

25 A He was arrested on another charge.

2 Q In the course of the arrest it was found
3 that he was driving without a license?

4 A With a suspended or revoked license, I
5 don't recall which it was now.

6 Q In September you saw him driving and in
7 order to -- and you stopped him in order to ascertain
8 whether he was driving without a license at that time?

9 A Well, plus the fact that the vehicle he
10 was driving did have a cracked windshield.

11 Q I understand that. I think we went over
12 that yesterday. In any event, you suspected that he was --
13 that he didn't have a valid license, and that was one of
14 the reasons that you stopped him?

15 A That's correct.

16 Q Did you ask him for a license after you
17 stopped him?

18 A Yes, I did.

19 Q What happened?

20 A I believe he said he didn't have one.

21 Q You don't remember the facts?

22 A I don't recall if he said he didn't have it
23 with him or he didn't have it. But he couldn't produce
24 one at that time.

25 Q In any event, he could not produce a license at

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2 that time?

3 A That's correct.

4 THE COURT: All right, thank you.

5 I don't have any further questions.

6 MR. ABZUG: I have nothing further, your
7 Honor.

8 THE COURT: All right.

9 Mr. Lessa?

10 MR. LESSA: Nothing further.

11 THE COURT: Thank you.

12 (Witness excused.)

13 THE COURT: The motion then of Mr. Lessa is
14 denied. I think that Officer Trotta had reasonable
15 cause, as I understand his testimony, and it hasn't been
16 challenged, to stop the defendant on the grounds that he --
17 on his belief that he was driving without a license
18 and stopping him -- what occurred thereafter, the taking
19 of the vehicle down to the police station and the policy
20 slips, or whatever, falling into his lap, he was clearly
21 within his rights to take them and there is no violation
22 of any fourth amendment, so that motion is denied.23 MR. LESSA: He had absolutely no right to
24 enter the car.

25 THE COURT: Of course he did, he had every

2 right to enter the car. The motion, in any event, is
3 denied. I thought about it and decided it.

4 I have one more issue and that is a question
5 raised by Mr. Katcher.

6 I'm not sure that I understand what your
7 request is. Are you indicating that -- as far as I
8 understand it, the issue you are raising is that when
9 Mr. Bucci was arrested there was some evidence that you
10 understand the government is going to use that was seized
11 not on his person but in his presence?

12 MR. KATCHER: In his immediate vicinity,
13 according to the memorandum received from Mr. Abzug's
14 office, your Honor.

15 THE COURT: In his immediate vicinity?

16 MR. KATCHER: Yes. If your Honor would
17 like to see the memorandum --

18 THE COURT: But using those terms,
19 Mr. Katcher, you bring the government's seizure within
20 the confines of Schimel, "Immediate environment."

21 MR. KATCHER: That ordinarily would be true,
22 your Honor, with reference to constructive possession,
23 which is what your Honor probably has in mind.

24 But this is a store and according to
25 the information given to me by Mr. Abzug, there are other

2 THE COURT: All right.

3 Anybody else?

4 MR. HARTMAN: I have no questions.

5 THE COURT: All right.

6 Anything further?

7 MR. ABZUG: No, your Honor.

8 THE COURT: Thank you.

9 (Witness excused.)

10 THE COURT: Call your next witness.

11 MR. ABZUG: The government calls James
12 Trotta.13 J A M E S T R O T T A , called as a
14 witness on behalf of the government, having
15 first been duly sworn, was examined and testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. ABZUG:

19 Q Mr. Trotta, you stated that you are a member
20 of the Yonkers Police Department. How long have you been
21 so employed, sir?

22 A Approximately three and a half years.

23 Q Are you assigned to any particular squad?

24 A Yes. I am assigned to the gambling squad.

25 Q How long have you been assigned to the

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2 gambling squad?

3 A Approximately three years.

4 Q Drawing your attention to September 3, 1974,
5 were you on duty on that day, sir?

6 A Yes, I was.

7 Q With whom?

8 A Detective William Drain, D-r-a-i-n.

9 Q Where were you on duty?

10 A In the City of Yonkers, in the Gunhill
11 area.12 Q Is that where you were at approximately
13 1:15?

14 A That's correct.

15 Q Drawing your attention to that time,
16 what if anything did you observe, sir?17 A I observed one John Monaco driving a brown
18 1972 Ford.

19 Q Was Mr. Monaco by himself?

20 A Yes, he was.

21 Q Is he in the courtroom today?

22 A Yes, he is.

23 Q Could you please identify him for the
24 jury?

25 A Mr. Monaco --

2 MR. LESSA: Identification conceded, if
3 your Honor please.

4 THE COURT: Stand up, please, Mr. Monaco.

5 THE WITNESS: Yes, that's Mr. Monaco standing
6 right there.

7 Q What if anything, did you do when you
8 observed Mr. Monaco in his vehicle proceeding and driving
9 alone?

10 A I observed Mr. Monaco driving down from
11 Alder Street down to Elm Street, and we proceeded to stop
12 him.

13 Q Why?

14 A I knew he was operating a vehicle without
15 a driver's license

16 Q What did you do once you had stopped his
17 vehicle?

18 A We asked Mr. Monaco to produce a driver's
19 license and vehicle registration.

20 Q Was --- where was Mr. Monaco when this
21 conversation was occurring?

22 A When we first stopped him he was seated in
23 the car.

24 Q What did Mr. Monaco respond to your
25 question?

2 A He produced a vehicle registration but he
3 couldn't produce a driver's license.

4 Q So what after that did you do?

5 A We advised Mr. Monaco that we were going
6 to impound his vehicle and issue him a summons for
7 driving without a license and also driving with a
8 cracked windshield.

9 Q What happened after that?

10 A I got into Mr. Monaco's vehicle to
11 drive it to the police station to impound it and
12 as I moved the vehicle, three white envelopes fell from
13 the sun visor into my lap.

14 Q What did you do with those envelopes?

15 A I recognized the envelopes as containing gambling
16 records and I advised Detective Drain what I found.

17 Q What did you and Detective Drain do
18 after that?

19 A At that time we placed Mr. Monaco under
20 arrest for possession of gambling records.

21 Q Did you take Mr. Monaco anywhere?

22 A Yes. I drove his vehicle down to the
23 police headquarters garage and Detective Drain brought
24 him down to the detective division.

25 Q What happened to Mr. Monaco once he was down

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2 at police headquarters.

3 A We took him to the detective division of
4 police headquarters and before booking him we conducted
5 a search of his person.

6 Q Did you personally conduct that search?

7 A Yes, I did.

8 Q What if anything did this search disclose?

9 A I found four more white envelopes containing
10 gamblig records, on his person.

11 MR. ABZUG: Mark this as 14-A and 14-B for identification

12 (Government's Exhibits 14-A and 14-B marked
13 for identification.)14 Q Showing you what has been marked for identifi-
15 cation only as 14-A and 14-B, can you tell the jury where
16 these -- do you recognize these two piles of envelopes?

17 A Yes, I do.

18 Q Drawing your attention specifically to
19 what's been marked for identification only as 14-A,
20 what are those envelopes, sir -- where were they found?21 A These are the three envelopes that fell from
22 the sun visor of Mr. Monaco's car.

23 Q How about 14-B for identification.

24 A These are the envelopes that were found on his
25 person.MR. ABZUG: I have nothing further from this
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2 witness, your Honor.

3 MR. LANNA: No questions.

4 THE COURT: Mr. Lessa.

5 CROSS EXAMINATION

6 BY MR. LESSA:

7 Q Officer Trotta, you testified that you
8 stopped him for a traffic violation, is that correct?

9 A t's correct.

10 Q You subsequently charged him at the police
11 station for possession of gambling implements, is that
12 correct?

13 A Would you repeat that question, please?

14 Q He was subsequently charged with violating
15 the gambling statutes of the -- Yonkers, was he not?

16 A That's correct, along with driving without
17 a driver's license.

18 Q And you gave him a summons for driving
19 without a license?

20 A That's correct.

21 Q Was he thereafter prosecuted in the courts
22 in Yonkers?

23 A For what purpose?

24 Q For the gambling implements.

25 A I believe he was.

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2 Q He was -- pled guilty, did he, do you know?

3 A I don't know whether he pled guilty or
4 whether he was found guilty.5 Q At any rate, he paid the penalty for the
6 crime, did he not?

7 MR. ABZUG: Objection.

8 THE COURT: That objection is sustained.

9 Q Was there any gambling material found
10 in a drawer in a police station when you were searching
11 Mr. Monaco?

12 A No, there was not.

13 MR. LESSA: That's all.

14 (Witness excused.)

15 THE COURT: Call your next witness.

16 MR. ABZUG: Government calls William J.
17 Skelton.18 W I L L I A M S K E L T O N , called as a witness
19 on behalf of the government, having first been
20 duly sworn, was examined and testified as follows:
21

22 DIRECT EXAMINATION

23 BY MR. ABZUG:

24 Q Mr. Skelton, what is your business address,
25 please?

A Westchester County Sheriff's Office, White Plains.

Reed 9/14/76 at 9:55
Dr. John F. malgor

